

² The Board notes that, following the October 26, 2018 decision, OWCP received additional evidence. Appellant also submitted additional evidence on appeal. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

through January 11, 2016; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 31, 1992 appellant, then a 40-year-old food service worker, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment. OWCP initially denied her claim on March 12, 1993. After several requests for reconsideration, following which OWCP denied modification of its prior decisions, appellant filed an appeal with the Board. By decision dated April 3, 1997, the Board remanded the case to OWCP, finding that appellant had established a compensable employment factor with respect to unwarranted sexually explicit comments made by a coworker. The Board found that the medical evidence of record was sufficient to require further development.⁴

OWCP accepted the claim for dysthymic disorder on May 30, 1997. The record does not indicate that appellant received wage-loss compensation. Appellant elected Office of Personnel Management (OPM) retirement benefits. Her annuity commenced on March 15, 2008.

The record contains a bill pay history that showed payments to Dr. John Brandes, a treating psychologist. The bill pay history also documented individual payments made to appellant including reimbursements from January 6, 2014 through January 11, 2016 for mileage to and from appointments with Dr. Brandes. This history noted numerous duplicate payments made to her for the same date of service.⁵

On May 17, 2016 a fiscal document was made part of the record which substantiated the amount of travel reimbursement paid by OWCP for claimed travel from January 6, 2014 through January 11, 2016. This included notations for duplicate and triplicate units of travel, and found that at that time, an overpayment due to the duplicative payments totaled \$3,168.84.⁶

On May 17, 2016 OWCP issued a preliminary determination that a \$3,168.84 overpayment of compensation had been created because appellant received duplicative payments for travel made from January 6, 2014 to January 11, 2016 for appointments with Dr. Brandes. It indicated that the

³ Docket No. 17-1041 (issued December 27, 2017); Docket No. 95-0332 (issued April 3, 1997). The record also contains a December 6, 1993 order dismissing appeal at the Director's request. *Order Dismissing Appeal*, Docket No. 93-1530 (issued December 6, 1993).

⁴ Docket No. 95-0332, *id.*

⁵ The record also contains bill status response lists indicating that OWCP denied private transportation claims for dates from 2007 to 2013.

⁶ The documented payments by OWCP for roundtrip units of 38 miles from January 16, 2014 through May 19, 2015, and for roundtrip units of 39 miles from May 26, 2015 through January 11, 2016.

proper distance between her home and his office was 19 miles, or 38 miles roundtrip, and noted that some of the duplicative payments had been for 77 miles, as she had improperly exaggerated the claimed mileage. OWCP found appellant at fault in creating the overpayment because the travel reimbursement request form (OWCP Form 957) included a certification clause that the information provided was true to the best of the claimant's knowledge. It found that she had accepted payments she knew were incorrect.

Appellant requested a prerecoupment hearing with OWCP's Branch of Hearings and Review, indicating that she disagreed that an overpayment occurred. During the hearing, held on October 12, 2016, she testified that her disability had caused confusion as to the mileage.⁷ Appellant submitted a December 3, 2015 report in which Dr. Brandes opined that she was psychologically unable to make the effort to bill for transportation to his office.

By decision dated December 7, 2016, the hearing representative finalized the determination that an overpayment of compensation in the amount of \$3,168.84 had been created. He also found appellant at fault in the creation of the overpayment and that she was, therefore, not entitled to waiver of the overpayment.

Appellant appealed to the Board on April 13, 2017. By decision dated December 27, 2017, the Board found that the case was not in posture for decision regarding whether she received an overpayment of compensation because the evidence of record did not include OWCP travel reimbursement forms she submitted to OWCP and, as such, it could not verify that she submitted duplicate requests for reimbursement and/or that she had requested payment for incorrect mileage. The Board set aside the December 17, 2016 OWCP decision and remanded the case for reconstruction of the record, to include OWCP 957 forms appellant submitted for claimed reimbursement. Following this and other development deemed necessary, OWCP was to issue a *de novo* decision regarding the overpayment of compensation.⁸

OWCP subsequently placed additional documentation into the record. This included OWCP 957 forms, all signed by appellant on May 29, 2015. The forms included requests for reimbursement of 38 miles roundtrip on 57 dates from December 24, 2013 to May 19, 2015 for travel between her home in Vallejo, California to Dr. Brandes' office at 1301 Jefferson Street Napa, California. Additional OWCP 957 forms included requests for reimbursement for travel to the same address of 77 miles roundtrip on 54 dates from December 16, 2013 to May 26, 2015, of which 53 of the dates were duplicative forms requesting reimbursement for 38 miles of roundtrip travel. On these forms appellant certified with her signature that the information she provided in connection with the travel refund request was true and correct and that she was aware that any misrepresentation to obtain reimbursement from OWCP was subject to penalties. Each of the forms submitted was also signed by Dr. Brandes.

Additional evidence included a listing of receipt dates for OWCP 957 forms and dates paid. A chronological pay history from January 6, 2014 through January 11, 2016 noted duplicate

⁷ Appellant had submitted an overpayment questionnaire prior to the hearing. She submitted additional financial information following the hearing.

⁸ Docket No. 17-1041, *supra* note 3.

payments. Remittance vouchers for July 2 and December 24, 2015 described payments for travel reimbursement of \$1,200.23 and \$2,260.80 respectively. Copies of cancelled checks in those amounts are found in the record, as well as cancelled checks dates January 28 and March 3, 2016 for \$929.88 and \$559.38 respectively.

On March 13, 2018 OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$3,205.14 had occurred because appellant was paid for duplicative reimbursement requests that she submitted for specific dates during the period January 6, 2014 through January 11, 2016. It found her at fault in the creation of the overpayment because she had certified on the claim forms that the information given was true and correct to the best of her knowledge and belief. The preliminary decision listed the specific dates in which duplicate or triplicate claims were made. A listing of receipt dates for OWCP 957 forms and dates paid was attached, along with an overpayment action request and overpayment recovery questionnaire (Form OWCP-20). OWCP afforded appellant 30 days to respond.

In a letter postmarked April 4, 2018, appellant requested a hearing before OWCP's Branch of Hearings and Review. She disagreed both with occurrence of the overpayment and with the finding of fault.⁹ On July 20, 2018 OWCP forwarded a second overpayment questionnaire and advised appellant of the type financial information necessary. Appellant again requested waiver in correspondence dated August 7, 2018.

On October 2, 2018 appellant submitted a completed overpayment recovery questionnaire, listing monthly income of \$1,570.88, monthly expenses of \$1,943.98, and assets totaling \$3,644.38. She also forwarded financial information and statements describing her monthly expenses.

During the hearing, held on September 24, 2018, appellant testified that she wanted payment for all travel expenses and questioned the allowable mileage and what were considered usual expenses. Following the hearing she submitted additional correspondence regarding her expenses, including financial information, and continued to maintain that she was not at fault in the creation of the overpayment.

By decision dated October 26, 2018, an OWCP hearing representative finalized the March 13, 2018 preliminary determination that an overpayment of compensation in the amount of \$3,205.14 had been created. She found that the overpayment occurred because appellant was overpaid for mileage reimbursement for service from January 6, 2014 through January 11, 2016, and found appellant at fault because she knowingly claimed and accepted compensation to which she was not entitled.

⁹ OWCP issued a final overpayment determination on April 13, 2018. This was vacated on July 12, 2018 because appellant had timely requested a hearing. The record also indicates that she wrote OWCP in April 2018 regarding a check she had not cashed in the amount of \$1,608.39. OWCP telephoned appellant on April 27, 2018 and informed her that this check was not from OWCP, but was her OPM annuity check, and she should contact OPM for information.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability, or aid in lessening the amount of monthly compensation.¹⁰ With respect to travel expenses for medical treatment, OWCP's regulations provide:

“(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what a reasonable distance to travel is, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, a roundtrip distance of up to 100 miles is considered a reasonable distance to travel. Travel taken by the shortest route, and if practical by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance.”¹¹

In interpreting section 8103(a) of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,238.95 during the period January 6, 2014 through May 26, 2015.

On December 27, 2017 the Board found the case not in posture for decision because the evidence of record did not include the travel reimbursement forms appellant had submitted to OWCP. With respect to the findings made in the Board's December 27, 2017 decision, those matters are *res judicata* absent any further review by OWCP.¹³

The record currently includes multiple medical travel refund request forms (OWCP Form 957) submitted by appellant and signed by her on May 29, 2015 in which she claimed reimbursement for 38 miles of roundtrip travel for 51 dates for the period January 6, 2014 through May 19, 2015 and also claimed reimbursement for 77 miles of travel. For the date May 26, 2015, she only claimed reimbursement for 77 miles.

¹⁰ 5 U.S.C. § 8103.

¹¹ 20 C.F.R. § 10.315(a).

¹² See *B.H.*, Docket No. 17-0479 (issued March 19, 2019).

¹³ See *C.S.*, Docket No. 17-2013 (issued April 11, 2018).

The record indicates that the allowable mileage for travel between appellant's home in Vallejo, California and Dr. Brandes' office in Napa, California is 38 miles. The record supports that on July 2, 2015 OWCP reimbursed her \$1,200.22 for 38 miles for the dates January 6, 2014 through May 19, 2015. On December 24, 2015 it reimbursed appellant \$2,260.80 for an additional 77 miles of travel on each date claimed and also for 77 miles on May 26, 2015. In its December 24, 2015 payment, for the dates January 6 through December 23, 2014, OWCP incorrectly reimbursed her for 77 miles of travel on 36 dates at the rate of \$43.12 each day, for a total of \$1,552.32, and for the dates January 5 through May 19, 2015, it incorrectly reimbursed her for 77 miles of travel on 15 dates at the rate of \$44.28, for a total of \$664.20. For the date May 26, 2015, it reimbursed appellant for 77 miles of travel, when she was only entitled to 38 miles, for an overpayment of \$22.43. Thus, by adding \$1,552.32, \$664.20, and \$22.43, an overpayment of compensation in the amount of \$2,238.95 was created for the period January 6, 2014 through May 26, 2015.

Regarding the period June 1, 2015 to January 11, 2016, the Board finds the case is not in posture for decision because the record does not contain OWCP 957 forms, signed by appellant requesting travel reimbursement, for that period. As noted, in its December 27, 2017 decision, the Board remanded the case to OWCP to obtain all completed 957 forms.¹⁴ OWCP, however, only placed OWCP 957 forms in the record for the dates January 6, 2014 through May 26, 2015. It is of particular importance to review all medical travel refund request forms which were found to be fraudulent because OWCP subsequently issued an overpayment decision that included dates after May 26, 2015 resulting from these requests.¹⁵ Thus, OWCP had not established the existence of an overpayment of compensation from May 26, 2015 through January 11, 2016. As such, without this crucial evidence, the Board will set aside the October 28, 2018 decision with regard to that time period and remand the case to OWCP for reconstruction of the case record. OWCP shall obtain all the OWCP 957 forms completed and signed by appellant for the claimed reimbursement period. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.¹⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."¹⁷

Section 10.433(a) of OWCP regulations provides that OWCP:

"[M]ay consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure

¹⁴ Docket No. 17-1041, *supra* note 3.

¹⁵ *Supra* note 12.

¹⁶ *Id.*

¹⁷ 5 U.S.C. § 8129; *see S.M.*, Docket No. 18-1525 (issued April 12, 2019).

that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits.... A recipient who has done any of the following will be found to be at fault in creating an overpayment: (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) Failed to provide information which he or she knew or should have known to be material; or (3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual).”¹⁸

To determine if an individual was at fault with respect to the creation of an overpayment, OWCP examines the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.¹⁹

ANALYSIS -- ISSUE 2

With regard to the period of overpayment discerned, the Board finds that appellant was at fault in the creation of the \$2,238.95 overpayment of compensation because she made an incorrect statement as to a material fact which she knew or should have known to be incorrect. The record establishes that on May 29, 2015 she signed 52 requests for reimbursement for roundtrip travel to Dr. Brandes’ office for the period January 6, 2014 through May 26, 2015. On 51 of the forms appellant requested reimbursement for both 38 miles of travel and 77 miles of travel on the same date. The correct roundtrip mileage is 38 miles. On one date appellant only requested 77 miles of travel. Each form signed by her included a certification clause in which, by signing, she acknowledged that the information given by her and in connection with the form was true and correct to the best of her knowledge, and noted that any person who knowingly made a false statement or misrepresentation to obtain reimbursement to OWCP was subject to civil penalties and/or criminal prosecution.

Appellant signed each of these forms with duplicate and/or excessive mileage requests on the same date. Under the circumstances of this case, the Board finds that she misrepresented a material fact in order to obtain reimbursement from OWCP, which makes her at fault in the creation of the overpayment. Appellant is, therefore, not eligible for waiver of recovery of the overpayment.²⁰

As to Dr. Brandes’ December 3, 2015 report that appellant was psychologically unable to make the effort to bill for transportation to his office, she submitted the Form 957 reimbursements requests for the period January 6, 2014 through May 26, 2015. However, his report contains no discussion as to why her psychological condition caused her to submit duplicate and/or excessive requests, which he cosigned. To be of probative value, the physician must provide rationale for

¹⁸ 20 C.F.R. § 10.433(a); *see C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *see also* 20 C.F.R. § 10.430.

¹⁹ *Id.* at. § 10.433(b); *C.Y.*, *id.*

²⁰ *See W.A.*, Docket No. 14-0350 (issued October 28, 2014).

the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.²¹ Thus, this report is of insufficient probative value to establish that appellant was psychologically unable to submit proper forms for the period of this overpayment.

With respect to recovery of the overpayment, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA.²² As appellant is not receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act.²³

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,238.95 for the period January 6, 2014 through May 26, 2015, because she was reimbursed for duplicate and excessive travel reimbursement requests. The Board further finds that the case is not in posture for decision regarding whether an overpayment of compensation for the period June 1, 2015 through January 11, 2016 was created.

²¹ C.V., Docket No. 18-1106 (issued March 20, 2019).

²² E.F., Docket No. 18-1320 (issued March 13, 2019).

²³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: July 3, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board